

DE 00-016

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Petition for Approval of Extension, Modification and/or  
Amendment and Substitution of Series D and E Pollution Control  
Revenue Bond Letters of Credit and Reimbursement Agreements  
and Related Security Arrangements

Order Approving Petition

O R D E R    N O.    23,416

March 1, 2000

**APPEARANCES:** Catherine E. Shiveley, Esq. for Public Service Company of New Hampshire; Donald M. Kreis, Esq. and Mark A. Naylor, Finance Director, for the Staff of the New Hampshire Public Utilities Commission.

On January 28, 2000, Public Service Company of New Hampshire (PSNH) filed a petition with the New Hampshire Public Utilities Commission (Commission) seeking approval under RSA 369 to extend and amend or replace the \$39,500,000 Series D and \$69,700,000 Series E Letters of Credit and Series D and E Reimbursement Agreements to (1) extend the maturity date of the Series D and E Letters of Credit for 364 days, (2) extend existing accounts receivable security, (3) amend the existing fees and expenses to reflect current market conditions, (4) update certain business covenants and (5) substitute agent and participating banks as necessary. PSNH submitted with its petition the prefiled testimony of Mr. Randy A. Shoop, the Company's Assistant Treasurer for Finance.

In connection with its petition, PSNH requested a waiver of the 14-day notice provision contained in the Commission's Rule 203.01. The Company also requested expedited treatment of its filing to permit consideration of the petition prior to the expiration of the Letters of Credit on April 12, 2000.

The Commission issued an Order of Notice on February 1, 2000 granting the requested waiver of the 14-day notice requirement, scheduling a prehearing conference for February 10, 2000, directing that any petitions to intervene be filed by February 7, 2000 and establishing a procedural schedule to apply for the remainder of the proceeding unless modified following the prehearing conference. The procedural schedule was consistent with the expedited treatment requested by the Company, providing for a merits hearing on February 24, 2000 and a Commission Order by March 1, 2000.

The Commission received no requests for intervention. The prehearing conference occurred as scheduled on February 10.

At the prehearing conference, there were no objections to the procedural schedule as established in the Order of Notice. PSNH and the Staff stated their preliminary positions.

The Company and Staff met for a technical session following the prehearing conference. Thereafter, the Company responded to data requests propounded by Staff, and on February 22, 2000 the Commission received the prefiled testimony of its Finance Director, Mr. Mark A. Naylor. The Commission conducted a merits hearing on February 24, 2000 at which Mr. Shoop and Mr. Naylor both testified. On February 29, 2000, PSNH filed a Summary of Indicative Terms and Conditions it had received from Barclays Bank PLC, the issuing and agent bank.

#### **I. POSITIONS OF THE PARTIES AND STAFF**

##### **A. PSNH**

PSNH, through its witness Mr. Shoop, asked the Commission to approve its requests as being in the public interest and the best solution that could be negotiated. According to Mr. Shoop, improvements in the financial condition of PSNH and its parent company, Northeast Utilities (NU), the general credit outlook and the general business outlook have created a more Company-favorable climate for these transactions this year than in previous years. Mr. Shoop indicated that PSNH therefore expects that the Letter of Credit commission and related fees may be substantially lower this year than in the past. It was also Mr. Shoop's testimony that the pendency of the proposed PSNH restructuring Settlement Agreement in Docket No. DE

99-099 has increased the confidence of the lending community in PSNH.

According to Mr. Shoop, PSNH currently has approximately \$190 million in cash on hand. He testified that paying the bonds at issue here in full would require \$110 million of that sum, and that PSNH's access to short-term debt, or other debt, could be further limited if the Settlement Agreement does not go forward as proposed. Thus, it was Mr. Shoop's testimony that paying off the bonds is not a viable option. He also noted that PSNH faces a \$25 million preferred stock sinking fund payment on June 30, 2000.

Mr. Shoop noted that PSNH is still negotiating with its lenders on the final terms and pricing for the transactions. He indicated that the scheduled "commitment date" at which the terms become fixed is March 17, 2000, with the closing date scheduled for April 3, 2000. He noted that the banks could opt not to close on the terms agreed upon at the commitment date in the event of a material adverse change to PSNH's circumstances.

Given that the final terms are still under negotiation, PSNH asks the Commission for approval to extend the Letters of credit at maximum fee levels, as we did last year. The requested maximums are the same as those approved in 1999: up-front fees of up to 3.00 percent of principal, a maximum annual Letter of Credit Commission of up to 2.75 percent, a maximum annual fronting fee of up to 0.50 percent, a maximum interest rate payable to the issuing banks for

tender advances of (1) for Base Rate Advances, an Alternate Base Rate (i.e., the higher of the federal funds rate plus 0.50 percent or the prime rate) plus 1.50 percent, and (2) for Eurodollar Rate Advances, LIBOR plus 2.50 percent. PSNH also seeks approval for administration fees of \$30,000 and drawing fees of \$150.

In his oral testimony, Mr. Shoop noted that the participating lenders have placed particular focus this year on the additional 2 percent Letter of Credit fee that would apply in the event of a PSNH default. He therefore deemed it prudent to remind the Commission of the existence of these provisions. As noted on the Term Sheet provided by PSNH subsequent to the hearing, a PSNH default would also raise the applicable interest rate payable for tender advances by two percent.

On behalf of PSNH, Mr. Shoop asked the Commission to lift two key restrictions that were imposed most recently when the Commission approved similar 364-day Letter of Credit extensions a year ago in Order No. 23,162 (March 9, 1999). These restrictions prohibit PSNH from paying a dividend and from investing funds with the NU Money Pool, which is where other NU affiliates are able to place cash in excess of their current needs for use by other affiliates.

Mr. Shoop noted that the Letters of Credit presently contain, and are expected to continue to contain, a covenant limiting

PSNH to a total of \$40 million in dividend payments or so-called NUG settlement payments. According to Mr. Shoop, it is no longer necessary for the Commission to impose the further limit of an outright dividend prohibition because of certain positive developments, specifically: the return to service of the Millstone nuclear units in Connecticut, the approval of electric industry restructuring by regulators in Connecticut and Massachusetts and NU's proposed merger with Consolidated Edison, now pending in Docket No. DE 00-009. Mr. Shoop also noted that, with improvements to the financial health of NU's affiliates, a majority of the Letter of Credit banks determined last year to permit PSNH to invest up to \$50 million in the NU Money Pool. Thus, Mr. Shoop asks the Commission to lift the Money Pool restriction. In that regard, Mr. Shoop noted on cross examination that the short-term interest rate PSNH is able to obtain for cash balances on its own is substantially similar to that which it could obtain through the Money Pool.

In his direct testimony, Mr. Shoop noted that PSNH retains the ability to convert the taxable bonds supported by the Letters of Credit to tax-exempt bonds "in the event that 'volume cap' becomes available in the future." At hearing, Mr. Shoop explained that "volume cap" is a limitation under Section 146 of the Internal Revenue Code on the amount of tax-exempt financing that can be issued by a state, its agencies or authorities. Mr.

Shoop indicated on cross examination that he believes there may be approximately \$50 million of "volume cap" currently available in New Hampshire.

**B. Staff**

Staff, through its witness Mark A. Naylor, Finance Director, supported the Company's petition for extension of the Letters of Credit generally and the terms and conditions therein. Staff also took the position that PSNH should not be further restricted from paying a dividend to NU, at least up to the \$40 million as allowed by the lenders.

According to Mr. Naylor, it would be improvident at this time to require PSNH to pay off the underlying bonds, which would require approximately \$110 million of the Company's roughly \$190 million in available cash. Mr. Naylor cites significant uncertainty as to future events: specifically, the possibility that either the Commission or the Legislature would reject the Settlement Agreement pending in Docket No. DE 99-099, which would require PSNH to face a rate proceeding and reconciliation with the temporary rates established in 1997. However, Mr. Naylor also noted on cross-examination that PSNH's likely recovery of the deferred balance in its Fuel and Purchased Power Adjustment Clause (FPPAC) account would offset some portion of any refund due customers as a result of rate reconciliation.

According to Mr. Naylor, lifting the restriction on PSNH dividend payments to its parent is appropriate as an aid to reducing PSNH's cost of capital. Mr. Naylor reasons that the PSNH capital structure is currently too heavily weighted toward higher-cost equity capital, that new debt financing is not warranted at present and that the payment of dividends is thus the only method available for increasing the ratio of PSNH's debt to equity. He also notes that PSNH has not paid a dividend in three years even though it has been consistently profitable. In the alternative, Mr. Naylor suggests that the Commission could consider a dividend cap of \$40 million, to coincide with the banks' restriction.

Mr. Naylor did not agree with the Company that it should now be permitted to invest in the NU Money Pool. It was his testimony that PSNH should not put any capital at risk in this manner until either it has been restructured or until the rate proceeding has concluded. He noted Mr. Shoop's concession that PSNH receives on its own essentially the same short-term rate on cash investments that it could acquire via the Money Pool.

## **II. COMMISSION ANALYSIS**

PSNH has requested permission to enter into agreements for the issuance of Letters of Credit of 364 days in duration to secure payments on its long term, variable rate Series D and E Pollution Control Revenue Bonds. The Letters of Credit are, therefore, an



integral component of the long term notes and we review the request pursuant to the provisions of RSA 369:1.

Pursuant to RSA 369:1, no utility engaged in business in this State may enter into any agreement evidencing indebtedness unless the Commission finds the terms and conditions of the indebtedness "consistent with the public good." The provisions of RSA 369:1 further specify that the Commission may attach "such reasonable terms and conditions [to its approval] as the commission may find to be necessary in the public interest." RSA 369:1. Moreover, in *Appeal of Easton*, 125 N.H. 205 (1984), the New Hampshire Supreme Court held that the Commission must "determine whether, under all the circumstances the financing is in the public good - a determination which includes considerations beyond the terms of the proposed borrowing." *Id.* at 213.

Based on our review of the record, and as we did a year ago, we conclude that the Company's proposal regarding the extension and/or replacement of its current Letters of Credit as described above is in the public interest. We recognize PSNH's imminent need to renegotiate the Letters of Credit as they will expire on April 4, 1999. We rely upon Mr. Shoop's testimony that the terms of the Letters of Credit are the best resolution the Company was able to negotiate to meet

PSNH's immediate financial needs. We note his testimony that the banks have drawn the Company's attention to the provision raising the applicable interest rates by two percentage points in the event of a default. As Mr. Shoop testified, this provision was included in the terms we approved last year.

With regard to the issue of PSNH dividends to its parent, the Settlement Agreement pending before the Commission in Docket No. DE 99-099 contains language addressing such a possibility.<sup>1</sup> In view of the pendency of the Settlement docket, we will maintain the current dividend restriction at this time and will address the matter in our final order in that case.

The last issue we take up is PSNH's request for permission to invest in the NU Money Pool. While we credit Mr. Shoop's testimony that the financial health of PSNH's affiliates in Connecticut and Massachusetts is improving, we note that uncertainties remain. Given that Mr. Shoop concedes there is no significant interest-rate advantage to be gained

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The language appears on pages 68 and 69 of the Settlement Agreement, at lines 1956-1959, and reads as follows: "PSNH agrees that it will not make dividend payments to its parent, NU, until the earliest date that the write-off associated with this Agreement has been taken; or the date this Agreement is either terminated pursuant to Section XVI or disapproved by the PUC."

by allowing PSNH to share its short-term cash resources with its affiliates in this manner, we conclude that it is in the public interest to deny PSNH's request to invest in the Money Pool.

**Based upon the foregoing, it is hereby**

**ORDERED,** that PSNH's petition for approval for Extension, Modification and/or Amendment and Substitution of Series D and E Pollution Control Revenue Bond Letters of Credit and Reimbursement Agreements and Related Security Arrangements is hereby APPROVED; and it is

**FURTHER ORDERED,** that PSNH gain Commission approval prior to making any dividend payments or any investment in the NU Money Pool.

By order of the Public Utilities Commission of New Hampshire this first day of March, 2000.

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Douglas L. Patch  
Chairman

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Susan S. Geiger  
Commissioner

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Nancy Brockway  
Commissioner

Attested by:

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Thomas B. Getz  
Executive Director and Secretary